

Entered on Docket  
March 31, 2009  
GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed: March 27, 2009

EDWARD D. JELLEN  
U.S. Bankruptcy Judge

ERIC A. NYBERG, ESQ.  
(Bar No. 131105)  
CHARLES N. BENDES, ESQ.  
(Bar No. 70126)  
CHRIS D. KUHNER, ESQ.  
(Bar No. 173291)  
KORNFIELD, NYBERG, BENDES  
& KUHNER, P.C.  
1999 Harrison Street, Suite 2675  
Oakland, California 94612  
Telephone: (510) 763-1000  
Facsimile: (510) 273-8669

Attorneys for John T. Kendall

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re  
A.F. EVANS COMPANY, INC.,  
Debtor.

Case No. 09-41727 EDJ

Chapter 11

ORDER APPROVING  
STIPULATION REGARDING  
CASH COLLATERAL AND  
ADEQUATE PROTECTION ON  
AN INTERIM BASIS

Date: March 12, 2009  
Time: 2:30 pm  
Ctrm: 215

This matter came before the Court on Notice of Motion or Approval Of Cash Collateral Stipulation And Granting A Replacement Lien And Other Adequate Protection ("Motion"). The Court having reviewed the Motion and having found that good and sufficient notice of the Motion and opportunity to be heard thereon has been given, opposition to the Motion having been considered and good cause appearing;

**IT IS HEREBY ORDERED** as follows:

1. The Court finds that the Debtor's use of cash collateral pending a final hearing on the Stipulation is necessary to avoid immediate and irreparable harm to the Debtor's estate and is appropriate under Rule 4001(b) of the Federal Rules of Bankruptcy Procedure, and the Motion is

Kornfield, Nyberg, Bendes & Kuhner, P.C.  
1999 Harrison Street, Suite 2675  
Oakland, California 94612  
(510) 763-1000  
FAX: (510) 273-8669

1 hereby GRANTED on an interim basis only subject to further hearing as set forth below, and  
 2 subject to the terms and conditions in the Stipulation Regarding Cash Collateral and Adequate  
 3 Protection that is the subject of the Motion, as amended by the Amendment To Stipulation  
 4 Regarding Cash Collateral And Adequate Protection (as amended, the "Stipulation").

5 2. On an interim basis, pursuant to the provisions of §§ 361, 363(c), and 363(e)  
 6 of Title 11 of the United States Code ("Bankruptcy Code"), §11 U.S.C. § 101, et seq, and  
 7 subject to each of the limitations set forth below in the Stipulation, the Debtor is hereby  
 8 authorized to use and disburse "cash collateral" as that term is defined in Bankruptcy Code  
 9 § 363(a) pursuant to the terms of the Stipulation and the budget attached as Exhibit "A" to  
 10 the Stipulation ("Budget") to the limited extent permitted by the terms of the Stipulation,  
 11 through and including April 2, 2009.

12 3. City National Bank shall be entitled to all of the protections set forth in the  
 13 Stipulation (except as provided in Paragraph 8 below), including, without limitation, the  
 14 replacement liens, adequate protection payments and administrative expense priority set forth  
 15 therein at the times and subject to the limitations stated in the Stipulation and the Budget.

16 4. This order approving the Stipulation on an interim basis shall be without prejudice  
 17 to the rights of any party in interest seeking further orders of this Court regarding the Stipulation.

18 5. A continued hearing on approval of the Stipulation shall be held on April 2, 2009 at  
 19 2:30 pm in Courtroom 215 of the United States Bankruptcy Court located at 1300 Clay Street,  
 20 Oakland California.

21 6. This interim order shall not prohibit CP III Evans, LLC from pursuing any rights it  
 22 may have under any security interest in or assignment of any property that is not property of this  
 23 bankruptcy estate, and this order does not alter or modify any contractual rights and duties  
 24 between non-debtor parties or between the Debtor and non-debtor parties, except as set forth in the  
 25 Stipulation and this order.

26 7. To the extent that the Debtor consumes any cash collateral in which the Court  
 27 determines CP III Evans, LLC has a perfected first priority lien, and to the extent such use results  
 28 in the diminution of the value of CP III Evans, LLC's interest in such cash collateral, CP III

Kornfield, Nyberg, Bendes & Kuhner, P.C.  
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 Oakland, California 94612  
 (510) 763-1000  
 FAX: (510) 273-8669

1 Evans, LLC is granted a replacement lien in an amount equal to such diminution, which lien shall  
 2 attach to the personal property of the Debtor, whether now owned or existing or hereafter  
 3 acquired, created or arising, and all products and proceeds thereof, of the same type and character,  
 4 as the Debtor's property from which such cash collateral was generated (but not including any  
 5 rights of the Debtor to avoidance actions under Chapter 5 of the Bankruptcy Code); provided that  
 6 nothing in this order shall operate as a waiver of or modification of any parties rights which are  
 7 expressly reserved, except as set forth in the Stipulation and this order.

8 8. This interim order does not approve the provision of Paragraph 25 of the  
 9 Stipulation and does not constitute a final order for the purposes of Paragraph 23 of the  
 10 Stipulation, and the Court reserves for further hearing the extent to which the Court may approve  
 11 the Paragraph 25 and the extent to which any subsequent order may constitute a final order for  
 12 purposes of Paragraph 23. For so long as any subsequent Interim Order at all times remains in  
 13 effect approving the Stipulation on the terms contained in this Order, no Event of Default shall  
 14 arise under Paragraph 9(i) of the Stipulation if a Final Order, as defined therein, is not entered  
 15 within 30 days of Petition Date.

16  
 17 Approved As To Form:

18 /s/ Frank T. Pepler  
 19 Frank T. Pepler  
 20 Attorneys for City National Bank

21 /s/ Lynette C. Kelly  
 22 Lynette C. Kelly  
 23 United States Department of Justice  
 24 Office of the United States Trustee - Oakland  
 25 Attorneys for the Acting United States Trustee

26 /s/ Robert Kaplan  
 27 Robert Kaplan  
 28 Attorneys for Union Bank

Kornfield, Nyberg, Bendes & Kuhner, P.C.  
 1999 Harrison Street, Suite 2675  
 Oakland, California 94612  
 (510) 763-1000  
 FAX: (510) 273-8669

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\_\_\_\_\_/s/ Alan Feld\_\_\_\_\_  
Alan Feld  
Attorneys for CP III Evans, LLC

\*\*\*END OF ORDER\*\*

**Kornfield, Nyberg, Bendes & Kuhner, P.C.**  
1999 Harrison Street, Suite 2675  
Oakland, California 94612  
(510) 763-1000  
FAX: (510) 273-8669

## COURT SERVICE LIST

U.S. Trustee  
1301 Clay Street, Suite 690N  
Oakland, CA 94612-5202

Eric A. Nyberg  
Kornfield, Nyberg, Bendes & Kuhner, P.C.  
1999 Harrison Street, Suite 2675  
Oakland, CA 94612

Richard A. Bell, Executive Vice President  
A.F. Evans Company, Inc.  
1000 Broadway, Suite 300  
Oakland, CA 94607

Frank T. Pepler  
PeplerMastromonaco LLP  
100 First Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105

Robert Kaplan  
2 Embarcadero Center, 5<sup>th</sup> Fl.  
San Francisco, CA 94111

Alan M. Feld  
Manatt, Phelps & Phillips LLP  
11355 West Olympic Blvd.  
Los Angeles, CA 90064

Kornfield, Nyberg, Bendes & Kuhner, P.C.  
1999 Harrison Street, Suite 2675  
Oakland, California 94612  
(510) 763-1000  
FAX: (510) 273-8669

## Notice Recipients

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### Recipients of Notice of Electronic Filing:

ust	Office of the U.S. Trustee/Oak	USTPRegion17.OA.ECF@usdoj.gov
aty	Eric A. Nyberg	e.nyberg@kornfieldlaw.com
aty	Frank T. Pepler	fpepler@peplermastromonaco.com
aty	Robert B. Kaplan	rbk@jmbm.com

TOTAL: 4

### Recipients submitted to the BNC (Bankruptcy Noticing Center):

aty	Alan M. Feld	Manatt, Phelps and Phillips	11355 W Olympic Blvd.	Los Angeles, CA 90064-1614
9805137	Rich Bell	1000 Broadway	Oakland, CA 94607	

TOTAL: 2